IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 771 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESHKUMAR S JAYSHWAL

Appearance:

1. Criminal Appeal No. 771 of 1991

MR KC SHAH, APP for Appellant

MS MEGHA JANI for Respondents

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 05/08/2004

ORAL JUDGEMENT

The State of Gujarat has filed this appeal under Section 378 of the Code of Criminal Procedure against the judgment and order passed by the learned JMFC, Ahmedabad (Rural), Mirzapur in Criminal Case No.515 of 1988, dated 22.7.1991 acquitting the respondents-accused for the offences punishable under Sections 2(1A) (A) (C) (l) and under Sections 7(l) and 7(5) of the Prevention of Food Adulteration Act (for short, "the Act").

2. On 25.2.1988 at about 13.30 hrs., the complainant Shri D.C.Patel, Food Inspector, visited the shop "Navdurga Provision Stores" of the respondents. After giving his introduction, he purchased 450 gms. of ground-nut oil. After following the procedure prescribed under the Act, he sent the sample for analysis to the Food and Drugs Laboratory. As per the report of the Public Analyst, dated 16.3.1988, the sample of ground-nut oil was found to be adulterated as it did not possess the requisite standard prescribed under the Act. Respondent No.1 as the seller and respondent No.2 as the proprietor of the provision stores, were charged for the offences punishable under Sections 2(1A) (A) (C) (l) and under Sections 7(l) and 7(5) read with Section 16 of the Act.

3. The learned Magistrate, after considering the evidence produced before him, acquitted the respondents by holding that a breach of Section 13(2) is committed inasmuch as application Exh.6 dated 11.8.1988 was made by the respondents requesting the Court to send the sample for analysis by the Central Food Laboratory, which was rejected by the Court on the ground that the same was not filed within ten days from the receipt of the report of the Public Analyst. According to the learned JMFC, the respondents were denied to establish their innocence and therefore, the benefit must go in favour of the respondents. Since this being the major ground for passing the order of acquittal, the appellant State has challenged the judgment and order of acquittal passed in favour of the respondents by filing the present appeal.

4. Learned APP Mr.K.C.Shah appearing for the appellant State submitted that in the instant case, the Public Analyst submitted the report on 16.3.1988 and the appellant had sent the said report on the date of filing of the complaint, i.e. 17.5.1988 which was received by them on 26.5.1988. As per the requirement of Section 13(2) of the Act, the appellant was entitled to file an application requesting the Court to send the sample for analysis by the Central Food Laboratory within ten days from the date of receipt of the report, i.e. on or before 5.6.1988. However, the respondents filed application Exh.6 on 11.8.1988, i.e. after more than two months. The learned JMFC, therefore, rightly rejected the application by his order dated 18.11.1988. According to the learned APP, filing application under Section 13(2) of the Act for analysis by the Central Food Laboratory within ten days is the requirement of the statute and any breach thereof would be nothing but a deliberate act to delay the case and therefore, on this

ground, the learned Magistrate could not have acquitted the respondents. To substantiate his submission, learned APP invited my attention to the following decisions in the cases of:

(i) Radheshyam Khetrival v. The State of West Bengal and ors., [1980(2) FAC 218 (Calcutta High Court)], and

(ii) [M/s.Seema Trade Agencies v. The State of Assam and ors. [1987(2) FAC 850 (Gauhati High Court)].

On the other hand, Ms.Megha Jani, learned Advocate appearing for the respondents, supported the reasoning of the trial Court in toto. She invited my attention to the following decisions rendered by this Court in the cases of:

(i) Mansingh Chhajuram Yadav and anr. v. State of Gujarat [1985(II) FAC 220];

(ii) Ratna Agencies v. Yogesh Chandra Soni [Criminal Revision Application No. 304 of 1996 - decided on 3.10.1996] (Coram: S.D.Pandit, J.); and

(iii) State of Gujarat v. Shri Mukundbhai S.Shah [Criminal Revision Application No. 1066 of 1991 - decided on 22.9.1992] (Coram: N.J.Pandya, J.)

5. After having gone through the cases cited before me, I am of the view that the question involved in the matter, viz. whether Section 13(2) of the Act is mandatory or directory, inasmuch as is it obligatory for a party to make an application to the Court within ten days from the date of receipt of the copy of the report to get the sample to be analysed by the Central Food Laboratory? In my opinion, the question in the present case is debatable in view of the fact that in the cases cited before me, no Court has examined the matter after examining the scheme of the said provision. I would have certainly decided the point, however, because of the constraint of time as the matter is listed in the provisional Board and that too, for a day, it is not possible for me to spare sufficient time in the matter. Since the present case is capable of being disposed of by keeping the said question open, I leave with the point advanced before me.

6. Learned Advocate for the respondents submitted that there are no material variances in the characteristics of the goods analysed by the Public Analyst. Learned Advocate, by inviting my attention to the report of the Public Analyst, submitted that the Public Analyst found characteristics, ten in number, of the sample of ground-nut oil and after examining the same, there are no material variances in the result of the analysis than the prescribed limits. It was, therefore, submitted that considering the time lag between the date of the offence and the decision of the appeal, this Court may not interfere with the order of acquittal passed by the learned JMFC. On perusing the report of the Public Analyst, out of ten characteristics of the ground-nut oil, there appears to be some variances as far as item No.3 - Iodine Value and item No.10 Bellier test are concerned. The Public Analyst, after result of analysis, found Iodine at 99.9 for which the PFA limit prescribed is 85-95. Thus, Iodine is higher than .9% than the prescribed limit. Likewise, 35.C is found as a result of analysis of Bellier Test which is less than 39.C to 41.C than the prescribed limit. Thus, except the aforesaid two items of the characteristics of the sample ground-nut oil, the other items are in conformity with the limits prescribed under the Act. The so-called variances as far as item Nos.3 and 10 are concerned, are quite marginal. In any case, there is no misgiving of any variant element. Therefore, there is no adulteration. This Court in the case of P.C.Trivedi v. Gajarben Chandulal & anr., reported in 2003(3) GLR 1876, in almost similar circumstances, did not interfere with the order of acquittal after recording a finding that the incident happened before 17 years.

7. Considering the above decision, I think, the present case also deserves the same treatment. The incident in the present case had taken place in the year 1988 and the respondents obtained the order of acquittal in the year 1991 and considering the fact that except the marginal variance in the prescribed standards, there being no adulteration, I am of the opinion that no interference with the order of acquittal passed by the learned JMFC is called for and that too, after so many years.

7. In view of the above discussion, by keeping open the question advanced before me, as to the requirement of provisions of Section 13(2) of the Act, the appeal is dismissed.

(Kshitij R.Vyas, J.)

Sreeram.